REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **FAO(OS) NO. 310 OF 2006**

% **Date of Decision** : **15th May, 2007.**

JOGINDER SINGH .... Appellant.
Through Mr. Arun Sukhija & Mr. Sandeep Tyagi, Advocates.

VERSUS

GURDEEP SINGH & ORS. .... Respondents.
Through Mr.Deepak K. Vijay & Ms. Neeru Sharma, Advocates for respondents 2 & 3.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. The present Appeal has been filed by Mr. Joginder Singh (hereinafter referred to as the appellant, for short) against the Order dated 16th March, 2006 passed by the learned Single Judge dismissing his application for amendment of the written statement under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code, for short). By the said amendment application, the appellant wanted to incorporate the following sentence in paragraph 7 of the preliminary objections and paragraph 24 of the reply on merits:-

> "That the market value of the properties even at the time of filing of the suit on 19.08.2001 of Lajpat Nagar Property was of Rs.1 crore and Sarojini Nagar Property was of Rs.3 crore. The plaintiff was suppose to pay court on both these properties on Rs.4 crore and not as Rs.33/- only."

2. Learned Single Judge has dismissed the said application on two grounds. Firstly, it was observed that the application was not maintainable in view of the proviso to Order VI, Rule 17 incorporated

by the Code of Civil Procedure (Amendment) Act, 2002 (hereinafter referred to as the Amending Act of 2002, for short) which came into force w.e.f. 1st July, 2002. Secondly, there was delay in filing of the application as the same was filed nearly after four years.

3. We have heard learned counsel for the parties and examined the records and pleading brought to our notice.

4. The Supreme Court in the case of ***State Bank of Hyderabad versus Town Municipal Council*** reported in 2006 (13) SCALE 332 has examined the proviso to Order VI, Rule 17 of the Amending Act of 2002. In view of Section 16(2) of the Amending Act of 2002, it has been held that the said proviso will not be applicable to any pleading filed before the commencement of Section 16 of the Code of Civil Procedure (Amendment) Act, 1999 (hereinafter referred to as the Amending Act of 1999, for short). The amending Act of 1999 commenced and came into force on 01.07.2002. In the present case, written statement was filed in May, 2002 i.e. before the Amending Act

of 1999 had come into force. Therefore, the proviso under Order VI, Rule 17 of the Amending Act of 2002 does not apply. In view of the above, we have to examine whether the amendment is justified and permitted as per law under the unamended provisions of Order VI, Rule 17 of the Code.

5. Learned counsel for the appellant submitted that the amendment sought in the written statement is merely clarificatory in nature and objections with regard to the valuation of the suit property had already been raised in the written statement. He made reference to paragraph 7 of the preliminary objections and paragraph 24 of the reply on merits.

6. As per the plaint, two immovable properties, subject matter of the suit, have been valued at Rs.18,48,400/- and Rs.43,47,000/- respectively. The plea taken in paragraph 7 of the preliminary objections of the written statement, is that the plaintiff is not in actual physical possession of both the properties and therefore he is liable

to pay ad valorem court fees. The appellant did not dispute the market valuation of the two properties. Similarly, in the reply to paragraph 24 of the plaint, relating to valuation and court fees, no objection with regard to valuation of the suit properties is raised. The contents of paragraph 24 of the plaint were vaguely denied in the written statement. The denial is not specific as required under law.

7. It is apparent that the appellant who is in possession of the properties is deliberately trying to delay the proceedings as noticed by the learned Single Judge.

8. It may be relevant to state here that the respondents herein, namely the plaintiff and the defendants 2 and 3 before the learned Single Judge have already filed their affidavits by way of evidence. It is the case of the plaintiff and the said defendants that their father late Mr. Gurbachan Singh had left behind several properties which were inherited by all of them and therefore the suit for partition has been filed on the ground that each one of them has right, title and interest

in the property of late Mr.Gurbhachan Singh to the extent of 1/4th each. The application for amendment of the written statement was filed by defendant no.1-the appellant herein, when the matter was already fixed for cross-examination of the witnesses by the plaintiff and the defendants 2 and 3, the respondents herein. It is clear from the original written statement of the appellants that he had accepted the market value of the properties as disclosed and stated in the plaint. By now questioning and challenging the market value in the amendment application, the appellant wants to set back the clock by more than four years and raise issues which were never disputed and challenged by him in the original written statement. In fact in the original written statement the appellant admitted the market value as disclosed. Amendment, if allowed, will require framing of additional issues, filing of fresh affidavits by way of evidence and more witnesses being produced in support and against the plea of the market value of the properties. This will considerably delay the trial.

The object and purpose of the amendment application therefore is to prolong and prevent expeditious disposal and decision of the suit. The application has been filed with a malafide motive and intention.

9. Power of amendment no doubt is wide but like all discretionary powers, has to be exercised with care and caution balancing equities and for doing justice to both the parties. An application for amendment moved in bad faith just to prolong litigation, create obstacles and cobwebs should be rejected. Leniency in such circumstances rather than serving cause of justice, causes delay and increases backlog of cases. What the appellant seeks by the amendment, is to virtually withdraw his admission regarding the market value of the properties and raise objection to the same. Admissions can be explained but on justifiable, good grounds and on cause being explained, why earlier a different statement was made. No reason or cause for moving application for amendment has been given nor it is explained why initially objection with regard to the market value of the

properties could not be taken, specially when the market value of the properties were fixed by the plaintiff not on the basis of whole figures. Property no. 6, K-Block, Lajpat Nagar was valued at Rs.18,48,000/- and property no. 198, Sarojini Nagar was valued at Rs.43,47,000/-. The appellant in the amendment application without disclosing any ground as to why no objection to valuation was earlier raised, now claims that the market value of the said two properties as on the date of filing of the suit on 19th August, 2001 was Rs.1 crore and Rs.3 crores respectively.

10. In view of the above, we find no merit in the present Appeal and accordingly the same is dismissed. No costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)

CHIEF JUSTICE

MAY 15, 2007.
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